Stateless persons' entitlement to citizenship – and Denmark's call for dilution of state obligations in this regard

verfassungsblog.de/stateless-persons-entitlement-to-citizenship-and-denmarks-call-for-dilution-of-state-obligations-in-this-regard/

Eva Ersbøll Mo 27 Feb 2017

Since 2011, Danish politicians have called for a reinterpretation, modernisation or change of the 1961 UN Convention on the Reduction of Statelessness (the statelessness convention). They claim that the convention is from another era and out of touch with current realities. Since the 2015 general election, a majority in the Danish Parliament has supported this viewpoint.

Over a year ago, the Danish minister for immigration and integration committed herself to contact the UN High Commissioner for Refugees (the UNHCR) to start discussions on a modernisation of the statelessness convention so that it could take account of the challenges of our time, particularly the problem of terrorism.

So far, however, the minister has not approached the UNHCR. Instead, the ministry for Immigration and Integration has asked nine European countries about their opinion on the convention and their interest in participating in a dialogue on the possibilities for amending the convention's article 1 (2) (c). The initiative has found very little support.

The Danish problem

Danish politicians (the government and a majority in Parliament) are critical of two of the statelessness convention's articles: firstly, article 1 (2) (c) allowing only limited conduct requirements when a stateless person born on a state's territory applies for its citizenship. Secondly, article 8 (1) prohibiting, as a rule, deprivation of citizenship that renders a person stateless, including in cases of terrorism.

This blog post will only focus at the Danish dissatisfaction with article 1 (2) (c), since this has been the driving force behind the call for a 'modernisation' of the statelessness convention.

According to the convention article 1, contracting states shall grant their citizenship to persons born on their territory who would otherwise be stateless. States may, however, make the grant of citizenship subject to up to four conditions, exhaustively listed in article 1, section 2, among others that the person concerned has not been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge (article 1 (2) (c)).

Normally, Denmark refuses to grant citizenship to applicants whom the National Security Service considers a possible threat to national security. Danish politicians want this rule to comprise all applicants, including stateless applicants who are born and raised in Denmark. In case of refusal of citizenship based on security reasons, the applicant cannot reapply for Danish citizenship within a certain period, normally five years. Subjecting stateless persons who are born and raised in Denmark to such condition would obviously be against (the letter of) the 1961 convention article 1 (2) (c). Against this background, Denmark wants a reinterpretation, modernisation or amendment of this provision.

Other countries' position

Austria, Belgium, Finland, France, Germany, the Netherlands, Norway, Sweden and the UK have told Denmark in one way or another that they do not share the concern about the convention and that they do not find it relevant to

discuss an amendment of the convention's article 1 (2) (c). (A few countries have refused to let their full opinion be published.)

Why Denmark is going its own way

The Danish objection to the statelessness convention should be seen in the light of the unique Danish naturalisation procedure. According to the Danish constitution, aliens can only acquire Danish citizenship by statute. This means that the legislature must decide who can acquire Danish citizenship, either automatically ex lege according to the (general) Act on Danish Nationality or by the Parliament's adoption of a naturalisation act in which the applicants are listed by their names etc. Since 2004, applicants who are born stateless in Denmark must apply for Danish citizenship by naturalisation. Twice a year, bills on naturalisation are presented in Parliament.

The legislative naturalisation procedure makes it easy to 'politicise' questions of citizenship. This was indeed the case in 2011. That year, it had become clear that stateless persons who were entitled to Danish citizenship according to international law for some time had wrongfully been refused Danish citizenship. After the handling of these cases had been put on the right track, it appeared that a Danish born stateless person whom the National Security Service considered a potential danger was included in a bill on naturalisation. Political disagreement broke out and it did not get any better when a similar case appeared both in 2012 and 2013.

Since the 2015 election, members of the parliamentary naturalisation committee have claimed that the problem with the statelessness convention must be resolved, and the minister of immigration and integration has frequently been confronted with her 'promise to change the statelessness convention' and questioned about the progress.

The substance

The argument that the statelessness convention is out of touch with current realities is not sustainable. The UN adopted the statelessness convention after lengthy negotiations going back to the Second World War – and thus, at a time where security issues had evidently played a major role. Since then, the international community has regarded the convention an essential tool in the efforts to reduce statelessness – also evidenced by the fact that since the convention's fifty years anniversary in 2011, the number of ratifications have risen from 37 to 68.

The statelessness convention is not the only binding instrument that entitles stateless persons born on a state's territory to citizenship. The general obligation to avoid statelessness, stemming from the Universal Declaration on Human Rights, article 15, on everyone's right to a citizenship, is implemented in a number of international and regional conventions. The International Covenant on Civil and Political Rights (article 24 (3)) and the Convention on the Rights of the Child (article 7) both establish that every child has the right to acquire a citizenship. The European Convention on Citizenship obliges state parties to base their citizenship law on the principle that statelessness shall be avoided. The explanatory report to the convention considers the obligation to avoid statelessness part of customary international law with reference to the UN statelessness convention that 'sets out rules for its implementation'. In addition, the European convention obliges states to grant their citizenship to children born on their territory (article 6 (3)).

What is more, a state's denial of granting its citizenship to stateless persons born and raised on its territory may possibly raise questions under the European Convention on Human Rights and even EU law. The case law of the European Court of Human Rights, for instance Genovese, and the European Court of Justice, for instance Rottmann, suggest that such possibilities may exist.

Thus, the question arises: Why the Danish efforts – is there a real security issue?

In the new millennium, we have seen a securitisation of citizenship law. However, the Danish call for an amendment of the statelessness convention cannot be explained as a security measure. Even after a conviction for an offence against national security, it is unlikely that a stateless person born and raised in Denmark could be expelled. No

other country would be obliged to take in such person, which is acknowledged by Danish politicians. However, they find it incomprehensible and unacceptable that Denmark is obliged to grant its citizenship to applicants whom the Security Service considers a possible threat to national security.

Prospects

It seems safe to conclude that there is no evidence of support from other countries to the Danish call for an amendment of the statelessness convention and there are reasons to believe that the Danish initiative will not influence the efforts to end statelessness, reflected in the Global Action Plan.

Maybe one could go a step further and ask whether the Danish initiative could prove beneficial by laying the ground for more international cooperation on citizenship law matters.

To give an example: Denmark approached the other nine countries asking them among other things whether they found it in accordance with the statelessness convention's article 1 (2) (c) to suspend the grant of citizenship to a person covered by the convention. Two countries, the Netherlands and Norway, found it in accordance with the convention to suspend the grant of citizenship if an applicant was being prosecuted with a possibility of being convicted for a crime that might have consequences for the grant of citizenship, e.g. offences against national security and crimes that may lead to imprisonment for a term of five year. A third country, Germany answered that the grant of its citizenship may be refused, if the security service finds sufficient factual evidence that a German born stateless applicant supports activities directed against the national security. In any case, a court review lies ahead.

Arguably, the interpretation of the obligations stemming from the statelessness convention is of common interest. There seems to be a need for a framework to resolve problems in the area of citizenship and promote inter-state exchange of related information – as also suggested by the Committee on Legal Affairs and Human Rights of the European Parliamentary Assembly.

It is to be welcomed if the Danish initiative could result in closer cooperation among states in citizenship law matters.

This blog post is published on Verfassungsblog and the Statelessness Blog.

SUGGESTED CITATION Ersbøll, Eva: *Stateless persons' entitlement to citizenship – and Denmark's call for dilution of state obligations in this regard, VerfBlog,* 2017/2/27, http://verfassungsblog.de/stateless-persons-entitlement-to-citizenship-and-denmarks-call-for-dilution-of-state-obligations-in-this-regard/, DOI: http://dx.doi.org/10.17176/20170227-163503.